

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

INNOVATION VENTURES, LLC; LIVING ESSENTIALS,
LLC; and INTERNATIONAL IP HOLDINGS, LLC,

Plaintiffs,

v.

ULTIMATE ONE DISTRIBUTING CORP.; GULAM NAJIMI,
a.k.a. GHULAMALI ALI NAJIMI; WALLY NAJIMI, a.k.a.
AHMED WALLY NAJIMI; EXCELWHOLESALE
DISTRIBUTORS, INC.; FARID TURSONZADAH, a.k.a.
FARID TURSON; CORE-MARK INTERNATIONAL, INC.;
RICHMOND WHOLESALE COMPANY, INC.; SAQUIB
KHAN; CVS CAREMARK CORP.; 7-ELEVEN STORE #
11152; 7-ELEVEN STORE # 25449C-2422; 7-ELEVEN STORE
11168F-2422; 7-ELEVEN STORE # 11181; 7-ELEVEN
STORE # 32760; 7-ELEVEN STORE # 23407; PRESTIGE
MOBIL; KAIVAL DELI & CATERING; HEIGHTS DELI AND
COMPANY; VALERO RETAIL HOLDINGS, INC.; NEW
ISLAND DELI; NEVINS GOURMET; DELTA DISTRIBUTION
SERVICES CORP.; SULAIMAN S. AAMIR; BROTHERS
TRADING CO., INC. d/b/a VICTORY WHOLESALE
GROCERS; QUALITY KING DISTRIBUTORS, INC.;
BASELINE DISTRIBUTION, INC.; DAVID FLOOD;
MIDWEST WHOLESALE DISTRIBUTORS; JUSTIN
SHAYOTA; MOA TRADING, INC.; DAVID K. LEE; CAPITAL
SALES COMPANY; WALID JAMIL, a.k.a. WALLY JAMIL;
PRICE MASTER CORP.; ABDUL SATAR NAJIMI; FOOD
DISTRIBUTORS INTERNATIONAL, INC.; SCOTT
TILBROOK; ELEGANT TRADING, INC.; AHMED BHIMANI;
EMPIRE TRADE WHOLESALE CORP.; TOP CHOICE
TRADING USA, INC.; UNIVERSAL WHOLESALE, INC.;
JOSEPH SEVANY, SR. a.k.a. JOE ZAITOUNA; BAJA
EXPORTING, LLC; JOSEPH SHAYOTA; TRADEWAY
INTERNATIONAL, INC. d/b/a BAJA EXPORTING; PURITY
WHOLESALE GROCERS, INC.; SHAH DISTRIBUTORS,
INC.; ARVIND SHAH; STEERFORTH TRADING, INC., a.k.a.
STEER FORTH TRADING, INC.; ISAAC ANZAROOT; JT
WHOLESALE, INC.; MCR INNOVATIONS AND
PACKAGING, INC.; MCR PRINTING AND PACKAGING
CORP.; RAID JAMIL, a.k.a. BRIAN JAMIL; MARIO
RAMIREZ; CAMILO RAMIREZ; TRIMEXICO INC.;
ADRIANA SHAYOTA; ONE STOP LABEL CORPORATION;

Case No. 12 Civ. 5354
(KAM) (RLM)

**DEFENDANT CVS
PHARMACY, INC.'S
ANSWER TO THE
SEVENTH AMENDED
COMPLAINT**

LESLIE ROMAN; FLEXOPACK; DONNA ROMAN;
NAFTAUNITED.COM; JUAN ROMERO GUTIERREZ a.k.a.
JUAN ROMERO; ADVANCED NUTRACEUTICAL
MANUFACTURING LLC; NUTRITION PRIVATE LABEL,
INC.; AKSHAR SERVICES LLC, a.k.a. PERFUME SHOWER;
MIKE WHOLESALE, a.k.a.MIKES-WHOLESALE.COM; and
JOHN DOES 1-10,

Defendants.

Defendant CVS Pharmacy, Inc. (“CVS”), erroneously sued as CVS Caremark Corporation, by and through their undersigned counsel, hereby answers the Seventh Amended Complaint (the “Complaint”) of plaintiffs Innovation Ventures, LLC; Living Essentials, LLC; and International IP Holdings, LLC (collectively, “Plaintiffs”) as follows. The numbered paragraphs below correspond to the numbered paragraphs of the Complaint. This Answer is based upon CVS’s knowledge as to its own activities, and upon information and belief as to the activities of others. Unless expressly admitted, all allegations in the Complaint are hereby denied.

THE NATURE OF THE ACTION

1. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

2. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

3. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

4. CVS admits that Plaintiffs purport to bring this action under Sections 32 and 43 of the Lanham Act (15 U.S.C. §§ 1114 and 1125), Sections 349 and 360-1 of the New York General Business Law, the Copyright Act of 1976 (17 U.S.C. § 106), and common law; that

Plaintiffs purport to assert claims of direct and contributory trademark infringement and dilution, false description and false designation of origin; unjust enrichment and unfair competition; and that Plaintiffs purport to seek injunctive and monetary relief. CVS lacks knowledge or information sufficient to form a belief as to the truth of all other allegations set forth in this paragraph, and therefore denies same.

5. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

6. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

7. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

8. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

9. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

10. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

THE PARTIES

Plaintiffs

11. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

12. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

13. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

14. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

15. This paragraph sets forth an internal definition, to which no response is required.

Previously Named Defendants

16. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

17. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

18. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

19. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

20. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

21. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

22. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

23. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

24. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

25. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

26. CVS admits the first sentence of this paragraph. CVS denies all allegations set forth in the second sentence of this paragraph.

27. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

28. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

29. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

30. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

31. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

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75. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

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79. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

80. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

Defendants Newly Named in the Seventh Amended Complaint

81. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

82. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

83. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

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87. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

88. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

JURISDICTION AND VENUE

89. This paragraph states legal conclusions to which no response is required.

90. This paragraph states legal conclusions to which no response is required.

91. This paragraph states legal conclusions to which no response is required.

FACTUAL ALLEGATIONS

92. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

93. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

94. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

95. Admitted.

96. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

97. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

98. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

99. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

100. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

101. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

102. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

103. This paragraph states legal conclusions to which no response is required. To the extent that a response is required, CVS denies all allegations set forth in this paragraph.

104. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

105. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

106. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

107. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

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113. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

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130. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

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132. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

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134. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

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142. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

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151. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

152. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

153. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

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162. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

163. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

164. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

165. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

166. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

167. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

168. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

169. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

170. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

171. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

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173. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

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175. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

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187. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

188. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

189. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

190. Denied.

191. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

192. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

193. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

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208. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

209. Denied.

210. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

211. Denied.

212. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

213. CVS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph, and therefore denies same.

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**FIRST CLAIM FOR RELIEF
FEDERAL TRADEMARK INFRINGEMENT (15 U.S.C. § 1114(1)(a))**

252. CVS hereby incorporates by reference its responses to paragraphs 1 through 251.

253. Denied.

254. Denied.

255. Denied.

256. Denied.

257. Denied.

**SECOND CLAIM FOR RELIEF
FEDERAL TRADEMARK INFRINGEMENT (15 U.S.C. § 1114(1)(b))**

258. CVS hereby incorporates by reference its responses to paragraphs 1 through 251.

259. Denied.

260. Denied.

261. Denied.

262. Denied.

263. Denied.

**THIRD CLAIM FOR RELIEF
CONTRIBUTORY TRADEMARK INFRINGEMENT**

264. CVS hereby incorporates by reference its responses to paragraphs 1 through 251.

265. Denied.

266. Denied.

267. Denied.

268. Denied.

269. Denied.

270. Denied.

271. Denied.

**FOURTH CLAIM FOR RELIEF
FALSE DESCRIPTION AND DESIGNATION OF ORIGIN IN COMMERCE**

272. CVS hereby incorporates by reference its responses to paragraphs 1 through 251.

273. Denied.

274. Denied.

275. Denied.

276. Denied.

277. Denied.

**FIFTH CLAIM FOR RELIEF
FEDERAL FALSE ADVERTISING**

278. CVS hereby incorporates by reference its responses to paragraphs 1 through 251.

279. Denied.

280. Denied.

281. Denied.

282. Denied.

283. Denied.

284. Denied.

**SIXTH CLAIM FOR RELIEF
FEDERAL DILUTION OF MARK**

285. CVS hereby incorporates by reference its responses to paragraphs 1 through 251.

286. Denied.

287. Denied.

288. Denied.

289. Denied.

290. Denied.

291. Denied.

292. Denied.

**SEVENTH CLAIM FOR RELIEF
FEDERAL COPYRIGHT INFRINGEMENT**

293. CVS hereby incorporates by reference its responses to paragraphs 1 through 251.

294. Denied.

295. Denied.

296. Denied.

297. Denied.

298. Denied.

299. Denied.

300. Denied.

301. Denied.

**EIGHTH CLAIM FOR RELIEF
NEW YORK DILUTION OF MARK AND INJURY TO BUSINESS REPUTATION**

302. CVS hereby incorporates by reference its responses to paragraphs 1 through 251.

303. Denied.

304. Denied.

305. Denied.

306. Denied.

307. Denied.

308. Denied.

**NINTH CLAIM FOR RELIEF
NEW YORK DECEPTIVE BUSINESS PRACTICES**

309. CVS hereby incorporates by reference its responses to paragraphs 1 through 251.

310. Denied.

311. Denied.

312. Denied.

313. Denied.

314. Denied.

**TENTH CLAIM FOR RELIEF
COMMON LAW UNFAIR COMPETITION**

315. CVS hereby incorporates by reference its responses to paragraphs 1 through 251.

316. Denied.

317. Denied.

318. Denied.

319. Denied.

**ELEVENTH CLAIM FOR RELIEF
COMMON LAW UNJUST ENRICHMENT**

320. CVS hereby incorporates by reference its responses to paragraphs 1 through 251.

321. Denied.

322. Denied.

AFFIRMATIVE DEFENSES

323. Plaintiffs have failed to state a claim upon which relief may be granted.

324. Plaintiffs' claims should be dismissed because United States Trademark Registrations Nos. 3,003,077; 4,004,225; 4,104,670; 4,116,951; 3,698,044; and 4,120,360 are invalid.

PRAYER FOR RELIEF

WHEREFORE, for the reasons stated above, CVS respectfully requests that each prayer for relief sought by Plaintiffs be denied, that the Complaint be dismissed with prejudice, and that this Court enter judgment on its behalf and award CVS its costs, attorneys' fees, and such other and further relief as this Court deems just and proper.

Dated: January 11, 2013
New York, New York

Respectfully submitted,

KENYON & KENYON LLP

*Attorneys for Defendant CVS Pharmacy, Inc.,
erroneously sued as CVS Caremark Corp.*

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